

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE HENRY GONZALEZ,
Individually and on behalf of all
others similarly situated,

AFFIDAVIT

Plaintiff,

-against-

Case No. 12-CV-3465 (BMC)

AUTO-CHLOR SYSTEM OF NEW YORK
CITY, INC., et. al.,

Defendants.

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STATE OF NEW YORK)

SS.:

COUNTY OF NASSAU)

ERIC CAPALDO, being duly sworn, deposes and says:

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1. I have worked for AUTO-CHLOR SYSTEM OF NEW YORK CITY, INC.
(hereinafter "Auto-Chlor") for approximately 4 months, or since June, 2012.

2. My title is Route Driver. My duties as a Route Driver are to service the
machines, clean the machines, repair the machines, deliver chemicals and sell other
products to current customers.

3. The people who I reported to at Auto-Chlor when I first began and
currently is Rich Dagastino, the Route Supervisor, Ron Lacey, the Branch Manager, &
Mike Bugiada, the Regional Manager.

4. When I began working for Auto-Chlor, I was provided with at least 5 uniforms, which consist of a button down shirt and slacks that have the Auto-Chlor logo on them. My uniforms are cleaned weekly by a company called Aramark. If my uniform gets ratty or torn, Auto-Chlor replaces my uniform. I have never been charged for my uniform.

5. I make \$11.50 per hour, plus commission, plus time and a half for overtime for all hours worked over forty in one week.

6. As far as benefits go, Auto-Chlor is very generous. In addition to my regular rate of pay, I also receive full medical benefits, paid sick time, holidays and vacation time. Not only that, but I have a savings plan through Auto-Chlor and Auto-Chlor offers me the option of having a 401(k) plan as well as participating in profit sharing.

7. My regular shift begins at 7:30 A.M. and ends usually between 5-6:30P.M., depending on my route that day, 5 days a week, Monday through Friday. I also get a half hour break each day. I am paid time and a half for all hours I work in excess of 40 hours per week. In addition to my regular shift, I am also required to work "on call" on a rotation, which results in me working on call for one week out of approximately every 6-7 weeks or so.

8. When I am "on call", I am not required to be at work, but am allowed to do whatever I want so long as I am available a phone call away to respond to customer issues. When a customer reports an issue with their machine when I am "on call", I am notified and leave wherever I am to service the customer. I am compensated for my "on

call” time by keeping time log of the time from when I leave my house, or current location, until I return home, or to my current location. At the end of my “on call” week, I report my time by recording it in the “on call” book in our office, so that it can be included in that week’s payroll.

9. For the entire time that I have worked for Auto-Chlor, it has always been company policy that “on call” time is compensated from the time we leave our house until the time we return home, and everyone knows that. Everyone also knows that the reporting of our “on call” time is based upon the “honor system” and that our boss relies upon us to accurately report our time. I have always been paid for the time I have reported to my boss and that time has always included my travel time from my home to the customer’s location and my travel time from the customer’s location back home.

10. I have been told that the plaintiff in this case is claiming that the “on call” time is reported from the time we arrive at the customer’s location until the time we leave the customer’s location. That simply is not true and has not been the policy of Auto-Chlor at least as long as I have been here.

11. If I ever had a problem with my paycheck, which I have not, I know that it is Auto-Chlor’s policy that any discrepancy be reported to either the branch manager, Ron Lacey, or regional manager, Mike Bugiada, and I know that it would be taken care of immediately.

12. It is Auto-Chlor’s policy to compensate you from the time you leave home, or wherever you are, until you return home, while working “on call”. As far as I know, there is no basis in fact to the claim in the plaintiff’s complaint that this is not the policy.

I am not aware of anyone ever not being compensated for their "on call" time from the time they left home until the time they returned thereto.


ERIC CAPALDO *EC*

Sworn to before me this
25th day of October 2012.


NOTARY PUBLIC

